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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,413	02/15/2002	Thurein M. Htoo	800189-11 (6829-60483)	3281

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EXAMINER

RINEHART, KENNETH

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 04/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/077,413

Applicant(s)

HTOO ET AL.

Examiner

Kenneth B Rinehart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 30-32, 51-54 and 57-61 is/are allowed.  
6) ☒ Claim(s) 1-5, 9-11, 13, 14, 16-21, 26, 36-41, 43, 44, 50, 55, 56 is/are rejected.  
7) ☒ Claim(s) 6-8, 12, 15, 22-25, 27-29, 33-35, 42 and 45-49 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Drawings*

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 26, 36-41, 43, 50, 55, 56 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claims 26, 36-41, 43, 50, 56 refer to no absorbing material positioned between the first and second filter members which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26, and 36-41, 43, 50, 55, 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26, line 2, refers to no absorbing material which is a negative limitation which renders the claim indefinite.

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Claim 36, line 4, refers to no absorbing material which is a negative limitation which renders the claim indefinite.

Claim 37, line 4, refers to no absorbing material which is a negative limitation which renders the claim indefinite.

Claim 43, line 2, refers to no absorbing material which is a negative limitation which renders the claim indefinite.

Claim 50, line 2, refers to no absorbing material which is a negative limitation which renders the claim indefinite.

Claim 55, line 2, refers to no absorbing material which is a negative limitation which renders the claim indefinite.

Claim 56, line 2, refers to no absorbing material which is a negative limitation which renders the claim indefinite.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 9, 19, 21, 26, 37, 39, 43, 44, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (5732837). Jones discloses a flask having a structure defining an opening (fig. 1); a first filter member disposed in the opening (7, fig. 1); said first filter member comprises at least one aperture sized to preclude passing of bacteria there through (col. 5, line 21), said first filter member comprises a plurality of apertures having an average aperture

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opening ranging from about 0.10 micrometer to about 0.65 micrometer (col. 5, line 21), a freeze drying apparatus (col. 1, line 21), said first filter member and ... have no absorbing material disposed between them (fig. 1), and having no absorbing material positioned between the first and ... (fig. 1). Jones discloses applicant's invention substantially as claimed with the exception of and a second filter member disposed in the opening juxtaposedly to the first filter, said first filter element has a higher flexibility than the second filter member, and having the capability of being contacted by the first filter when the first filter is flexed, said first filter member has a higher flexibility than the second filter member. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have and a second filter member disposed in the opening juxtaposedly to the first filter, because Applicant has not disclosed that the number of filters provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the filter of Jones or the claimed filter because both quantities of filters perform the same function of equally well. Regarding, said first filter element has a higher flexibility than the second filter member, and having the capability of being contacted by the first filter when the first filter is flexed, said first filter member has a higher flexibility than the second filter member, this language is functional language which is given little patentable weight. The claim language illustrates what the apparatus does as opposed to its structure.

Claim 4, and 20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (5732837) as applied to claim 1 and 19 above, respectively, and further in view of Rits. Jones discloses applicant's invention substantially as claimed with the exception of a retainer ring

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engaged to the flask for retaining the first and second filter members in the opening. Rits teaches of a retainer ring engaged to the flask for retaining the first and second filter members in the opening (42, fig. 2) for the purpose of allowing the filter to remain seated during changes in pressure. It would have been obvious to one of ordinary skill in the art to modify Jones by including a retainer ring engaged to the flask for retaining the first and second filter members in the opening as taught by Rits for the purpose of allowing the filter to remain seated during changes in pressure so that the processing can proceed more efficiently.

Claims 9-11, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (5522155) in view of Rits. Jones discloses a freeze drying apparatus; and a device disposed in said apparatus for holding substances during freeze drying (col. 7, line 41-50), said device comprising a flask having a structure defining a opening a first filter member disposed in said opening (93, fig. 13), disposing a substance in a flask; positioning the flask in a drying apparatus; and passing a drying medium through a first filter member... for drying the substance (col. 7, lines 35-50), rehydrating the dried substance (col. 7, line 54), exposing the flak to water vapor (col. 7, line 54). Jones discloses applicant's invention substantially as claimed with the exception of the flask comprises a transparent structure, viewing the substance through the transparent structure. Rits teaches the flask comprises a transparent structure, viewing the substance through the transparent structure (col. 4, lines 5-7) for the purpose of examining the substance to make observations. It would have been obvious to one of ordinary skill in the art to modify Jones by including the flask comprises a transparent structure, viewing the substance through the transparent structure as taught by Rits for the purpose of examining the substance to make observations. Jones in view of Rits discloses applicant's invention substantially as claimed with

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the exception of and a second filter member disposed in the opening juxtaposedly to the first filter member, and through a second filter member juxtaposed to the first filter member. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have and a second filter member disposed in the opening juxtaposedly to the first filter member, and through a second filter member juxtaposed to the first filter member, because Applicant has not disclosed that the number of filters provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the filter of Jones or the claimed filter because both quantities of filters perform the same function equally well.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Rits as applied to claim 10 above, and further in view of Sutherland et al. Jones in view of Rits discloses applicant's invention substantially as claimed with the exception of contacting the substance with a temperature conductive member for monitoring the temperature of the substance, coupling a thermocouple to the temperature conductive substance. Sutherland et al teaches contacting the substance with a temperature conductive member for monitoring the temperature of the substance, coupling a thermocouple to the temperature conductive substance (36, 42, fig. 2) for the purpose of accurately controlling the freeze drying process. It would have been obvious to one of ordinary skill in the art to modify Jones by including contacting the substance with a temperature conductive member for monitoring the temperature of the substance, coupling a thermocouple to the temperature conductive substance as taught by

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Sutherland for the purpose of accurately controlling the freeze drying process to prevent rendering a useless substance.

***Allowable Subject Matter***

Claims 30-32, 51-54, 57-61 are allowed.

Claims 6-8, 12, 15, 22-25, 27-29, 33-35, 42, 45-49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 55 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth B Rinehart whose telephone number is 703-308-1722. The examiner can normally be reached on 7:30-4:30 M-F.

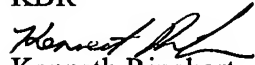
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KBR



Kenneth Rinehart

Patent Examiner

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